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QUESTION, *Professor King*: What are the chances of the U.S. eventually accepting a Canadian-type scheme for oil pollution liability?

ANSWER, *Mr. Jarashow*: I certainly think that it's a possibility. One of the barriers is the concept of non-preemption of state law. The fundamental problem of the legal regime in the United States is that the states layer, on top of a federal regime, a body of law, which essentially handcuffs the federal government, preventing it from doing anything but a small range of limiting factors in the area of oil pollution liability and remuneration.

The idea of a top-up scheme might work, but it would have to be attached to the concept of the shipowner being able to fall within the international regime of limited liability. Until that concept is bought in the United States, I don't think that there is even compatibility between the two schemes.

QUESTION, *Ms. Dallmeyer*: Is the International Convention limited to effects within the territorial seas of signatories?

ANSWER, *Mr. Popp*: The way it works is that it doesn't matter where the spill is. If the spill is on the high seas, but spreads into the territorial seas, then it is covered. If it doesn't spread into territorial seas, then it's not covered.

One of the hard compromises at the 1984 conference was to extend the application of the Convention out to 200 miles. If there is a spill beyond that, then it is not covered. In that regard, in current negotiations for the adoption of a new convention, a suggestion has been made, I think by our Australian friends, that the new convention should apply to the high seas. Others have said that poses quite a few problems, because who really has jurisdiction out there?

QUESTION, *Ms. Dallmeyer*: Is the $500 million cap set by the P & I Clubs essentially a private decision? Is there nothing to keep the P & I Clubs from reducing the coverage that they're willing to extend?

ANSWER, *Mr. Jarashow*: You have to understand a little bit more about the P & I or protection and indemnity concept to understand why that is probably not going to happen. The real problem is not sufficient reinsurance capacity to raise the $500 million cap. There was, until last year, $700 million available through primary and excess reinsurance.

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Principally, because of the effects of oil pollution liability in the United States, the Oil Pollution Act of 1990 and the *Exxon Valdez*, insurance capacity shrunk from $700 million to $500 million, and people were really quite surprised that $500 million could be achieved.

It is a matter of consent that the insurance companies will extend as much reinsurance capacity as is available. Because P & I coverage is really a shipowners' group created by the shipowners in their own self interest, the likelihood is that they're going to continue to insure for the maximum amount of available reinsurance.

QUESTION, *Ms. Dallmeyer*: What would have been the difference in the liability faced by Exxon had the U.S. adopted the International Convention, as opposed to the laws existing at the time?

ANSWER, *Mr. Jarashow*: Assuming that limitation of liability would have been permitted under the international regime, the maximum coverage available under the 1984 protocols was US $260 million. Rumors abound that Exxon has paid upwards of $2 billion for settling cases under that particular oil spill.

QUESTION, *Professor King*: What is the likelihood of the compensation protocols coming into force without U.S. participation?

ANSWER, *Mr. Popp*: There are international efforts underway now to develop a few new protocols which would reproduce the sections of the 1984 protocols, but which would make significant changes to the entry into force provisions, so as to make it possible for the substance of the 1984 protocols to come into force without U.S. participation. In other words, the international community, principally the Europeans and a few others, are determined to bring those protocols into force without U.S. participation, because we need the change in the system: notably, the substantial increase in compensation.

QUESTION, *Ms. Dallmeyer*: Does the international regime still preserve the sanctity of the cargo as being isolated from liability?

ANSWER, *Mr. Popp*: In the strict sense you're correct; there is no direct liability of the cargo under the scheme. However, the argument goes, of course, that cargo contributes to compensation through the mechanism of the International Fund. It is thought this is a more appropriate way of channeling the participation of the cargo interest.

QUESTION, *Mr. Luneberg*: Does the International Convention include natural resource damage provisions?

ANSWER, *Mr. Popp*: The definition of "pollution damage" in the 1969 Civil Liability Convention, which also, incidentally, governs the 1971 Fund Convention, is very open-ended. It basically speaks of, I think, contamination, and then leaves it to national courts to interpret what this definition includes. This was okay until the Fund Convention came into force, and then it was suddenly realized that such could result in unequal treatment of the notion of pollution damage, depending on the court to which you go. It could be broadly interpreted in one country to

include natural resource damage, but a more conservative view might be taken in another country.

This resulted in the IOPC Fund adopting guidelines as to what it would recognize under this heading. I can't tell you from the U.S. point of view, but certainly from a Canadian point of view, the Fund actually went further in recognizing environmental resource damages than conventional Canadian law would go. In other words, for example, it recognized the right of compensation of hotel owners, fishermen or anyone who can show economic damage directly resulting from the spill. However, there was still the fear, especially of the United States, that there needed to be some consensus or uniformity among the contributing countries. So, the IOPC adopted guidelines which were then taken up into the new definition that you find in the 1984 protocol, which recognizes damage to the environment as a specific head, but attempts to restrict it to costs of restoration. This is an effort to put some lid on it, and I can tell you that is a fairly explosive subject within the international scheme.

QUESTION, *Ms. Jensen*: Will there be continued pressure due to importation of oil that would perhaps lead to opening up places like Anwar, the Alaska wilderness preserve, to oil exploration?

ANSWER, *Mr. Jarashow*: I think it's quite obvious that with the emphasis on or the de-emphasis in international shipping, in the sense that vessels will not call on the United States by virtue of the new oil regime, and assuming that situation gets worse and not better, I obviously would foresee the possibility of a growing need to develop domestic resources and also domestic fleets.